



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0063]

RIN 1625-AA09

Drawbridge Operation Regulation; Pelican Island Causeway,
Galveston Channel, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; effective period extended.

SUMMARY: The Coast Guard is extending the temporary final rule changing the operating schedule that governs the Pelican Island Causeway bridge across Galveston Channel mile 4.5 (GIWW mile 356.1), at Galveston, Texas. Extending this temporary final rule allows the bridge to remain closed to navigation for an additional six months while major repairs are conducted to the mechanical portions of the bascule span. The additional time for these repairs is necessary due to a delay in beginning the repairs resulting from construction and contractual needs and delays.

DATES: This temporary final rule is effective from 6 a. m. on July 8, 2014 through 6 a. m. on December 31, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0063. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail David Frank, Bridge Administration Branch, Coast Guard; telephone 504-671-2128, e-mail David.M.Frank@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol

A. Regulatory History and Information

On April 5, 2013, we published a temporary final rule entitled "Drawbridge Operating Regulations; Pelican Island Causeway, Galveston Channel, TX" in the Federal Register (78 FR 20451). This temporary final rule allows the Pelican Island Causeway bridge to remain closed to navigation during certain times for necessary bridge repairs and is effective through July 8, 2014. The Coast Guard is extending this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard is extending an already existing temporary final rule. Completing the NRPM process is impracticable and contrary to public interest because it would interrupt and delay the scheduled and noticed repair work for this bridge. Continuing this repair work without

interruption requires the bridge to be closed to navigation throughout the repair period. The scheduled start date for the repair work was delayed and the existing temporary final rule, although in effect, was not utilized until October, 2013. The time required for the work necessary to repair the bridge remains 14 months, requiring an extension to this temporary final rule and allowing repair work to continue seamlessly. Further, while this closure has prevented certain vessels from passing under the bridge, vessels will be able to transit around the island through the Galveston Channel. This route involves an additional distance of up to three miles.

B. Basis and Purpose

The Pelican Island Causeway bridge, Galveston Channel mile 4.5 (GIWW mile 356.1), at Galveston, Texas, is a bascule bridge connecting Galveston Island with Pelican Island in Galveston, Texas. The roadway is the only land route between the two islands and is a vital link to numerous facilities and to the Texas A&M University Galveston Maritime School. An inspection by the Texas Department of Transportation (TXDOT) and the Federal Highway Administration determined that the "Rocker Segmental Girder Tracks" that allow the bridge to open and close were severely damaged and in need of immediate

repair. Due to the advanced age of the bridge, replacement parts were not readily available and the existing parts had to be removed and molds made to manufacture replacement parts. During the planning stages for this work, modifications to the work required contractual issues to be corrected, delaying the start of the project approximately six months. During the delay, the bridge continued to operate normally allowing for the passage of vessels through the bridge. Due to the fact that the start of the project was delayed and the total time of the repair did not change, the extension of the temporary final rule is necessary to accommodate completing repairs.

Under the existing operating schedule, before the temporary final rule, the bridge operated as follows: the draw of the Pelican Island Causeway bridge across Galveston Channel, mile 4.5 of the Galveston Channel, (GIWW mile 356.1) at Galveston, Texas, shall open on signal; except that, from 6:40 a.m. to 8:10 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the draw need not be opened for passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

Vessel traffic consists of mainly small tows and supply vessels, recreational boats and some commercial

shrimpers. The bridge opens approximately 7 times per day for the passage of vessels. The vertical clearance of the bridge in the closed to navigation position is 13 feet above mean high water.

Approximately 4000 vehicles cross the bridge in each direction daily. This includes students, factory and shipyard workers and delivery vehicles of all types.

Originally, TXDOT issued a contract for the repairs and the contractor was to begin on May 6, 2013. Due to unforeseen modifications to the project, the start date of the repair work was delayed requiring the repairs to continue past the original expiration date of the temporary final rule. The Corps of Engineers, the Port of Galveston, waterway users and the Coast Guard discussed the need for the extension of the closure with the bridge owner, TXDOT, FHWA, and the contractor to discuss ways to minimize the effects on navigation and understand the need for the work. These parties also acknowledge the fact that marine traffic can transit around the island through the Galveston Channel, involving an additional distance of up to three miles, with little or no interruption to their services.

C. Discussion of Temporary Final Rule

The extended temporary final rule allows the bridge owner to continue the necessary repairs to the bridge that include: the removal of the rocker segmental girder track for repair/replacement of the damaged parts of the track. Removal of the track rendered the bridge inoperable with

regards to opening for the passage of vessels. The necessary repairs and this related temporary final rule were scheduled to begin on May 6, 2013. The repairs requiring the bridge to remain closed to navigation actually began in October, 2013, subsequently delaying the need for the temporary final rule. Due to the initial delay, completion of the repairs is expected to take until December 2014. The end of this temporary final rule is therefore extended from July 8, 2014 until December 31, 2014.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule is not a significant regulatory action because it has been coordinated with those parties affected by the closure. It is understood that the work is necessary for the continued operation of the bridge and by allowing repairs to continue without interruption, the possibility of catastrophic failure of the movable bridge is further reduced. Additionally, this closure will not significantly impact navigation in the area as marine traffic may transit around the island through the Galveston Channel, an additional distance of up to three miles.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: the owners or operators of

vessels with vertical clearance requirements of greater than 13 feet intending to transit beneath the bridge from 6 a.m. on May 6, 2013 until 6 a.m. on December 31, 2014. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: the bridge closure will prevent certain vessels from transiting beneath it; however, those vessels may safely transit around the island through the Galveston Channel, involving an additional distance of up to three miles.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be

received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves allowing a movable bridge to remain closed to navigation for an additional six months and will not have any impact on the environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Effective 6 a.m. on July 8, 2014 until 6 a.m. on December 31, 2014, suspend §117.966 and add §117.T966 to read as follows:

§ 117.T966 Pelican Island Causeway, Galveston Channel.

The draw of the Pelican Island Causeway bridge across Galveston Channel, mile 4.5 of the Galveston Channel, (GIWW mile 356.1) at Galveston, Texas, need not open for the passage of vessels.

Dated: May 19, 2014.

Kevin S. Cook,
Rear Admiral, U.S. Coast Guard,
Commander,
Eighth Coast Guard District.

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